IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

WRIT PETITION NO.5767 OF 2004

Dr.Omprakash Dube ...Petitioner

vs.

Maharashtra University of
Health Sciences & Others. ...Respondents.

Mr.P.K.Dhakephalkar with Mr.A.P.Mhatre for Petitioner.

Mr.Govilkar, for Respondent nos.1 & 2.

Smt.J.S.Pawar, Addl.G.P. for Respondent nos.3 & 4.

Mr.S.S.Pakale with Mr.D.A.Dube for Union of India.

CORAM: A.P.SHAH & S.U.KAMDAR, JJ.

DATED: 15th September,2004

ORAL JUDGEMENT (PER S.U.KAMDAR,J.)

1. The Petitioner has in his capacity as a Secretary of an educational charitable trust viz. N.K.Dube Charitable Trust, filed the present Writ Petition under Article 226 of Constitution of India. He is seeking direction from this Court that the Respondent no.1 be directed to grant affiliation to the college run by the said charitable trust known as

"Nalasopara Ayurved Medical College". The Petitioner has sought further directions that name of the said college should be shown in the list of Centralised Admission of the State of Maharashtra, in the course of Ayurvedic College for admitting students for the Academic year 2004- 05.

2. On 23rd October,1991, the said College known as "Nalasopara Ayurved Medical College" (hereinafter referred to as the said college) was granted permission to start an Ayurved Medical College in District Thane. The permitted student capacity was of 50 students. It is the case of the Petitioner that the said college thus started functioning since 1992-93. According to the Petitioner, the said college was affiliated to the then University of Bombay for the period of One year i.e. 1992-93 and same was renewed from time to time till 2003-04. The Central Council of Indian Medicine (hereinafter referred to as "C.C.I.M.") has also granted necessary permission to the Petitioner to conduct Ayurvedacharya Course and grant degree of "B.A.M.S." This approval granted by C.C.I.M. has been renewed from time to time. According to the

Petitioner, in the year 1998, the Respondent no.1-University was established as an "University of Health Sciences". The said university, thereafter, was required to grant affiliation to the various colleges including the Petitioner herein. According to the Petitioner, the first affiliation was granted to the Petitioner's College on 18th April,2000, which was for the period 1998-99 and 1999-2000. On 7th April,2004, the Local Inquiry Committee of the first Respondent visited the Petitioner's College and found various shortfalls in the facilities and infrastructure, which were required for conducting Ayurvedic Medical college. The said Local Inquiry Committee has, in particular, found deficiencies pertaining to appointment of Senior Professors and also found that Trust's new building has not become complete for operations.

3. On 12th April,2004, the Petitioner gave an undertaking to the first Respondent-University that deficiencies will be removed within the period of Twenty days and also assured the first defendant that 6 - 7 senior professors will be appointed immediately. Further assurance was given to shift the hospital in the new trust owned building by 1st May,2004. On 7th April,2004, according to the

Petitioner, the Petitioner has complied with the undertaking and the assurances given to the First Respondent and therefore, the Petitioner wanted continuation/ renewal of the affiliation with the first Respondent. On 6th/10th May,2004, the communication was received by the Petitioner from the first Respondent-University inter alia stating therein to obtain prior permission of the first Respondent before shifting the Hospital to new building, as the Respondent no.1 desires to appoint an Inquiry Committee for carrying out necessary inspection of the facilities and infrastructure available in the said new building. The first Respondent also called upon the Petitioner to deposit Rs.30,000/- (Rupees Thirty thousand only) towards the inspection fee. On 20th May,2004, the Petitioner gave reply to the First Respondent and contended that in fact the Local Inquiry Committee has already carried out inspection on 7th April,2004. It is the case of the Petitioner that at the time of carrying out said inspection, the said committee had inspected both new as well as old building. In any event, the Petitioner has furnished necessary

demand draft of Rs.30,000/- (Rupees thirty thousand only) and requested Local Inquiry committee to carry out fresh inspection, if the Respondent no.1 so desired. On 14th May,2004, a letter was received by the Petitioner from the first Respondent- University once again pointing out various shortfalls in the facilities and infrastructure, and directed the Petitioner to make good the same. It is the case of the Petitioner that they complied with the said deficiencies and reported the compliance by letter dated 9th June,2004. On 19th June, 2004, the Petitioner received a letter from the first Respondent stating that the Petitioner should furnish affidavit-cum-undertaking to the effect that he has complied with the norms laid down by C.C.I.M. The Petitioner has accordingly furnished such affidavit and stated that they shall comply with the necessary requirements of C.C.I.M. within six months. On 1st July,2004, admission process for academic year 2004-05 commenced. However, in the list of colleges which were found eligible and qualified for centralised admission process, the name of the Petitioner's college was not included and therefore,the Petitioner filed the present Writ Petition inter alia seeking direction that name of

the Petitioner's college should be included for the purpose of centralised admission process.

4. In the course of hearing of the present Petition, we directed the University to once again carry out necessary inspection and accordingly, pursuant to our direction, on 10th July,2004, the Local Inspection Committee had carried out inspection and submitted the report to this Court. In the said report, which is on record, we found that there is total deficiency in teaching staff in the said college. Out of the Eleven posts for the Professor, there is only one post filled in and Out of Thirteen posts of Reader again only one post is filled in. The report undoubtedly sets out various deficiencies. We also tried to find out from C.C.I.M. inspite of such gross deficiencies of teaching staff, on what basis they could give affiliation and/or permission to admit the students in the said college.

5. The Petitioner admits that there are deficiencies in the teaching staff as indicated by the Local Inspection Committee. However, it is contended that it is because necessary staff which

are on the roll of the Petitioner's college have not been accepted as duly appointed and holding posts of professor and reader, though they are qualified in that behalf. Learned Advocate for Respondent no.1 on the other hand urged before us that this staff is not appointed to the posts of professor and reader in accordance with the procedure prescribed under the provisions of Statute i.e. Maharashtra University of Health Sciences Act. It is, therefore, the case of the Respondent no.1 that there are no qualified teachers which are duly appointed on the various posts. The learned Advocate for the Respondent no.1 has also pointed out various other deficiencies. The C.C.I.M. have in their affidavits stated that though there are deficiencies, the C.C.I.M. have given permission to admit the students on the basis of undertaking of the Petitioner's college that during the course of time, deficiencies will be removed. However, C.C.I.M. does not agree with the figures of teaching staff as provided by Respondent no.1-University, though the Petitioner does not dispute the same. In the present case, we find that there is a serious deficiency of teaching staff in the college. The contention of the Petitioner that

they have qualified staff though not duly appointed to the post and therefore, they should be permitted to run the college cannot be accepted. The Petitioner's college as an institution is required to appoint teaching staff in accordance with the provisions of Law, Rules and Regulations framed by Respondent no.1-University. Admittedly, the Petitioner has not appointed the said teaching staff in accordance with the provisions of Act and Rules and Regulations. On the other hand, the Petitioner is seeking to commence the admission process and seeks reliefs from this Court that name of the college should be included in the list of colleges recognised for the purpose admission of students for academic year 2004-05. We are afraid, in the exercise of our writ jurisdiction under Article 226 of Constitution of India we cannot permit the Petitioner's college to admit the students particularly in the light of the report from the Local Inquiry Committee that there are serious deficiencies of teaching staff in the Petitioner's college. In any event, we are of the view that the matter is required to be resolved between the Petitioner and Respondent no.1 and in the light of

aforesaid, we are inclined to issue following directions:-

(i) That the Petitioner shall, within the period of two weeks from today, file necessary proposal for approval of advertisement for appointment of teaching staff with the First Respondent-University in accordance with prescribed rules.

(ii) The Respondent no.1 shall pass appropriate orders on the said proposal within a period of two weeks from the date of receipt of aforesaid proposal from the Petitioner's college.

(iii) The Respondent no.1 shall also constitute necessary committee and/or approve the Committee constituted by the Petitioner's college and depute their representative on the Selection committee for selection of teaching staff as required under the Rules, within the aforesaid period of two weeks.

(iv) The Petitioner's college shall undertake to carry out necessary exercise of appointment of teaching staff thereafter and it will be open for the teaching staff who is, according to the Petitioner,

qualified though not duly appointed on the post, to apply for such appointment in pursuance of the said advertisement and if any such application is made, then the same also shall be considered by the Selection Committee in accordance with the Law and on its own merit.

(v) The Respondent no.1 shall consider afresh petitioner's request for affiliation and pass appropriate order in accordance with law.

With the aforesaid directions, we dispose of the present Petition. However, there is no order as to costs.

(A.P.Shah, J.)

(S.U.Kamdar, J)